

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

KINETIC CONCEPTS, INC.,  
KCI LICENSING, INC., KCI USA, INC.,  
and WAKE FOREST UNIVERSITY  
HEALTH SCIENCES

Plaintiffs,

VS.

BLUESKY MEDICAL CORPORATION

Defendant.

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§ SA08CA0102 RF  
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§ CIVIL ACTION NO. 2:07cv188  
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PLAINTIFFS' ORIGINAL COMPLAINT

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Plaintiffs, Kinetic Concepts, Inc., KCI Licensing, Inc., and KCI USA, Inc. (collectively, "KCI"), and Wake Forest University Health Sciences (individually, "Wake Forest" and collectively with KCI, "Plaintiffs") file this Original Complaint for damages and injunctive relief against BlueSky Medical Corporation ("BlueSky" or "Defendant"). In support of their Original Complaint, Plaintiffs allege as follows:

**I. PARTIES**

1. Plaintiff Kinetic Concepts, Inc. is a corporation organized under the laws of the State of Texas, having its principal place of business at 8023 Vantage Drive, San Antonio, Texas 78230. Kinetic Concepts, Inc. is a global medical technology company with leadership positions in advanced wound care and therapeutic surfaces.

2. Plaintiff KCI USA, Inc. is a corporation organized under the laws of the State of Delaware having its principal place of business at 8023 Vantage Drive, San Antonio, Texas 78230. KCI USA, Inc. is a wholly owned subsidiary of Kinetic Concepts, Inc.

A TRUE COPY I CERTIFY  
DAVID MALAND, CLERK  
U.S. DISTRICT COURT  
EASTERN DISTRICT, TEXAS

By: 

3. Plaintiff KCI Licensing, Inc. is a corporation organized under the laws of the State of Delaware having its principal place of business at 8023 Vantage Drive, San Antonio, Texas 78230. KCI Licensing, Inc. is a wholly owned subsidiary of Kinetic Concepts, Inc.

4. Plaintiff Wake Forest is a non-profit corporation organized under the laws of the State of North Carolina having its principal place of business at Medical Center Boulevard, Winston-Salem, North Carolina 27157-1023. Wake Forest is a wholly-controlled subsidiary of Wake Forest University.

5. Defendant BlueSky is a California corporation, incorporated in April of 2002, with its principal place of business in La Costa, California. BlueSky may be served with process by serving its registered agent, Richard Weston, at 2852 Cacatua Street, Carlsbad, California 92009.

## **II. JURISDICTION AND VENUE**

6. This case arises under the federal patent laws, 35 U.S.C. § 1 *et seq.*, and therefore this Court has jurisdiction under 28 U.S.C. §§ 1331, 1338(a).

7. This Court has personal jurisdiction over the Defendant. Defendant regularly conducts business in this District and has committed acts of infringement within the state of Texas and within this judicial district.

8. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 1400(b) because the acts and transactions constituting the violations alleged herein, occurred in part in this judicial district and because the Defendant transacts business in this judicial district. Venue is also proper in this district under 28 U.S.C. § 1391(c) because Defendant is a corporation that is subject to personal jurisdiction in this district.

### **III. BACKGROUND**

9. KCI is a leader in the development, manufacture and distribution of specialty therapeutic medical devices.

10. Several of KCI's product lines feature products that provide wound care benefits for patients. KCI's wound care product lines include variations of the Vacuum Assisted Closure<sup>®</sup> System ("V.A.C.<sup>®</sup> System").

11. The commercialization of the V.A.C. System dramatically revolutionized wound care by providing effective treatment for difficult-to-treat and chronic wounds.

12. The V.A.C. System incorporates certain novel features and characteristics invented by researchers working on behalf of Wake Forest in Winston-Salem, North Carolina. In recognition of the technological advances made by these researchers, the U.S. Patent and Trademark Office issued U.S. Patent No. 7,216,651 ("the '651 patent"), which is assigned to Wake Forest.

13. The '651 patent, entitled "Wound Treatment Employing Reduced Pressure," was duly and lawfully issued on May 15, 2007, and is extant and enforceable until its expiration date of November 14, 2011. Wake Forest is the true and record owner of the '651 patent.

14. Kinetic Concepts, Inc. is the exclusive licensee of the '651 patent, by virtue of a written license agreement effective October 6, 1993 with Wake Forest. Pursuant to that license agreement, KCI has the exclusive worldwide right to make, have made, use, lease and sell products incorporating the inventions covered by the '651 patent. At all times relevant to this complaint, KCI has complied with the marking requirement of 35 U.S.C. § 287.

15. BlueSky packages, markets, and distributes a "Versatile 1 Wound Vacuum System." The Versatile 1 Wound Vacuum System consists of disposable dressing kits (the

“BlueSky Dressings”) and the Versatile 1 pump, both of which are packaged, marketed, and distributed by BlueSky.

16. BlueSky also packages, markets, and distributes a “VISTA System.” The VISTA System consists of the BlueSky Dressings and the VISTA Versatile 1 Portable pump, both of which are packaged, marketed, and distributed by BlueSky.

#### **IV. CAUSE OF ACTION: FEDERAL PATENT INFRINGEMENT**

17. Paragraphs 1 through 16 are repeated and realleged as if fully set forth herein.

18. Defendant’s Versatile 1 Wound Vacuum and VISTA Systems, in whole or in part, incorporate the invention of the ‘651 patent exclusively licensed to KCI. Manufacture, sale, offers for sale, and use of the Versatile 1 Wound Vacuum or VISTA Systems infringe the ‘651 patent either literally or under the doctrine of equivalents.

19. Defendant is knowingly and directly infringing or inducing infringement of the ‘651 patent within this District and elsewhere, without leave or license from Plaintiffs, all to Plaintiffs’ substantial damage. Additionally, Defendant is contributorily infringing the ‘651 patent within this District and elsewhere, without leave or license from Plaintiffs, all to Plaintiffs’ substantial damage. Defendant will continue to do so unless enjoined from it by this Court.

20. Said direct or contributory infringement of the ‘651 patent, or the active inducement of others to infringe the ‘651 patent, is damaging Plaintiffs, and Plaintiffs will suffer additional and irreparable damage unless this Court enjoins Defendant from continuing to directly or contributorily infringe or induce others to infringe the ‘651 patent.

21. Unless enjoined by this Court, Defendant will continue to infringe or contributorily infringe or induce others to infringe the '651 patent, making this an exceptional case and justifying the award of attorneys' fees pursuant to 35 U.S.C. § 285.

**V. JURY DEMAND**

Plaintiffs hereby request a **trial by jury**.

**VI. PRAYER**

For these reasons, Plaintiffs ask for judgment against Defendant for the following:

- A. Defendant, its officers, agents, servants, employees, successors, assigns and attorneys, and all persons in active concert or participation with any of them, be preliminarily and permanently enjoined from any further acts of infringement or contributory infringement or inducing others to infringe U.S. Patent No. 7,216,651.
- B. Plaintiffs recover all damages they have sustained as a result of Defendant's infringement, but not less than a reasonable royalty, together with interest and costs under 35 U.S.C. § 284.
- C. The Court declare that this is an exceptional case pursuant to 35 U.S.C. § 285 and award Plaintiffs their reasonable attorney fees.
- D. Plaintiffs recover their costs and expenses for prosecuting this action and prejudgment and postjudgment interest.
- E. Plaintiffs recover all other relief the court deems appropriate.

Respectfully submitted,

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